

32142#26

SCH-SMI

①

Office - Supreme Court, U. S.

FILED

JAN 3 1944

CHARLES F. MOORE CROPLEY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1943

HERBERT OTTO SCHUCHARDT,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF
MICHIGAN,

Respondents.

No. 573

Petition for Writ of Certiorari to the Supreme Court
of the State of Michigan and Supporting Brief

143867

A. W. RICHTER,

Attorney for Petitioner.

INDEX

	Page
Petition for writ of certiorari	1
Summary statement of matters involved	1-4
Questions presented	5
Reasons relied upon for allowance of writ.....	5-6
Brief in support of petition	7-23
I. Jurisdiction	7-8
II. Statement of the case	9-11
III. Opinion below	11
IV. Errors to be assigned	11

ARGUMENT

Petitioner was illegally detained without being brought before a magistrate in violation of the state statutes and was denied the right to obtain counsel	12
He was induced by promises to waive preliminary examination and did so at 5 o'clock immediately after the illegal detention	12-13
The right to counsel is guaranteed by the Constitution of Michigan	15
Petitioner was never informed of his right and was not furnished a copy of the information but was deceived by the sheriff into believing that the charge was merely larceny of a gun, although in fact it was a statutory burglary, a felony.....	15
The trial court denied application for new trial without taking evidence and without permitting petitioner to be produced	16

In other cases from the same circuit the same sheriff is charged with the same deception as is here claimed	17
If the statement of the sheriff and probation officer had been true the charge would have been merely a misdemeanor	17
Petitioner claims he is not guilty of the charge....	18-19
The wife of petitioner was deceived by the probation officer as to the nature of the offense and was prevented from obtaining counsel for petitioner and this is not denied in the record	19
The failure of the trial court to receive evidence and to allow the prisoner to be produced upon the hearing of the application for new trial deprived him of his federal constitutional rights....	20-21
Application for leave to appeal was the only remedy available to petitioner under the law of Michigan	21-22
Articles obtained by an illegal search of petitioner's home in Wisconsin influenced the court in reaching judgment	22-23
Alleged political beliefs of petitioner prejudiced the court so that it meted out a harsh and unusual sentence to a man without criminal record.....	23-24
The totality of facts shows a clear violation of petitioner's federal constitutional rights.....	24

TABLE OF CASES

Anderson vs. U. S., 318 U. S. 350, 87 L. Ed. 589, 63 Sup. C. 599, 602	5, 18
---	-------

Avery vs. Alabama, 308 U. S. 444, 84 L. Ed. 377, 60 Sup. C. 321	6, 8, 16
Betts vs. Brady, Warden, 316 U. S. 455, 86 L. Ed. 1595, 62 Sup. C. 1252	6
Chambers vs. Florida, 309 U. S. 227, 84 L. Ed. 716, 60 Sup. C. 472	6
Cochran vs. Kansas et al., 316 U. S. 255, 86 L. Ed. 1453, 62 Sup. C. 1068	5
Holiday vs. Johnston, 313 U. S. 342, 353, 85 L. Ed. 1393	20
Johnson vs. Zerbst, 304 U. S. 458, 82 L. Ed. 461, 58 Sup. C. 1019	6
Linnen vs. Banfield, 114 Mich, 93, 72 N.W. 1.....	12
Lisenba vs. California, 314 U. S. 219, 236, 86 L. Ed. 166, 179, 62 Sup. C. 280	5, 16, 20
Mooney vs. Holohan, 294 U. S. 103, 55 Sup. C. 340, 79 L. Ed. 791	21
McNabb vs. U. S. 318, U. S. 332, 87 L. Ed. 579, 585, 63 Sup. C. 608, 614	5, 17
In re Offil, 293 Mich. 416, 292 N.W. 352.....	8, 21
People vs. Pisoni, 233 Mich. 462, 206 N.W. 986.....	15
People vs. Severn, 303 Mich. 337, 6 N.W. 2d 536.....	17
People vs. Vasquez, 303 Mich. 340, 6 N.W. 2d 538..	17
Powell vs. Alabama, 287 U.S. 45, 57, 77 L. Ed. 159, 53 Sup. C. 55	5, 16, 17
Schneiderman vs. U. S., 319 U. S.—, 63 Sup. C. 1333, 1343	24
Smith vs. O'Grady, 312 U. S. 329, 61 Sup. C. 572, 85 L. Ed. 859	5, 8, 14, 19

Ward vs. Texas, 316 U. S. 547, 86 L. Ed. 1663, 62 Sup. C. 1139	8, 14
Waley vs. Johnston, 316 U. S. 101, 62 Sup. C. 964, 86 L. Ed. 1305	6, 20
Walker vs. Johnston, 312 U. S. 275, 279 et. seq., 85 L. Ed. 830, 61 Sup. C. 574	5, 20

STATUTES

Federal

Judicial Code, Section 237-b, 28 U. S. C. 344-b.....	7
--	---

Michigan

Section 17147, Compiled Laws	12
Section 17160, Compiled Laws	12
Section 17204, Compiled Laws	13
Section 16899, Compiled Laws, 28.588 Stat. Ann.....	18
Section 16589, Compiled Laws, 28.772 Stat. Ann.....	18
Section 17368, Compiled Laws, 28.1100 Stat. Ann...	21
Section 17193, Compiled Laws	12

Constitution of Michigan

Article II, Section 19	15
------------------------------	----

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1943

HERBERT OTTO SCHUCHARDT,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF
MICHIGAN,

Respondents.

No.

**Petition for Writ of Certiorari to the Supreme Court
of the State of Michigan and Supporting Brief**

To the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Herbert Otto Schuchardt respectfully prays that a writ of certiorari issue to review the order of the Supreme Court of the State of Michigan denying his application for leave to appeal from the judgment and sentence of the Circuit Court of Midland County, State of Michigan.

**SUMMARY STATEMENT OF MATTERS
INVOLVED**

Petitioner, a naturalized citizen of German birth and a citizen and resident of the County of Milwaukee and State of Wisconsin, was arrested at the City of Midland,

Midland County, Michigan on January 15, 1943 at 1:00 P.M. He was not taken before an examining magistrate but was kept in a room from the time of his arrest until 5:00 P.M. During that time he was continuously interrogated by the assistant prosecuting attorney of Midland County, the sheriff and other officers (R. 7). He was not permitted to obtain a lawyer, and was informed that he would not be permitted to leave the room until he had signed a confession, and was intimidated and threatened to a point where he was not able to exert his own will power and was persuaded and induced by Ira H. Smith, Sheriff of Midland County, who had him in custody, by the promise of said sheriff that he would be put on probation, to waive preliminary examination. After 5:00 P.M., he was hurried before a justice of the peace and charged with the crime of entering the private apartment of Ira Smith of the City of Midland with intent to commit a felony, to-wit, larceny. By reason of the promises and persuasion of the sheriff and without having been permitted to obtain counsel or to consult with his wife, who resided with him in Midland, he waived preliminary examination and was bound over to the Circuit Court for trial (R. 9).

He was not informed of the nature of the charge against him, but was told by the sheriff that it was merely larceny of a rifle, and, upon the basis of this belief, he waived preliminary hearing. From that time to 7:00 P.M., he was held in confinement without being permitted to communicate with his wife or an attorney and was then brought before the Honorable Ray Hart, Circuit Judge, and arraigned, and an information was read to him (R. 19) and he was informed by the court that the charge was larceny from a private apartment entering a private apartment with intent to commit a larceny, that is, to steal (R. 20). He then pleaded guilty.

He was then taken to the jail at Bay City, Michigan and there confined up to the time of his trial. During this confinement, he was informed by Hiram A. Nicholson, probation officer to whom the case has been referred, that, since he was a first offender, he would be put on probation, and he was persuaded by Ira H. Smith not to communicate with A. W. Richter of Milwaukee, an attorney with whom he was acquainted, and not to engage any attorney. He continued under the belief that he was charged merely with larceny of a rifle.

The wife of petitioner was informed by the sheriff on January 18, 1943, that her husband had pleaded guilty to the offense of stealing a rifle, and the sheriff persuaded her not to obtain counsel for her husband, and dissuaded her from speaking to the Circuit Judge by informing her that this would be harmful to her husband's case, and persuaded her that her husband would be put on probation (R. 12).

The probation officer likewise informed petitioner's wife that her husband had pleaded guilty to stealing a gun; and, that as a first offender, he was quite certain that he would be put on probation and advised her not to engage a lawyer (R. 13). On January 21, the sheriff called for petitioner's wife and drove her to the Bay City jail and again cautioned her not to engage an attorney and assured her that her husband would be put on probation. On January 23, she visited her husband in jail and he told her to return to Milwaukee and consult A. W. Richter and to retain him to appear for him in the action. She communicated this to the probation officer who advised her not to go to Milwaukee and not to obtain an attorney and assured her that her husband would be put on probation. On January 26, she went to jail in Bay City to visit her husband and was informed that he had been taken to court at Midland, and, on the

evening of that day, the sheriff brought her husband to her living apartment and informed her of his conviction, and that he was then taking him to the state prison at Jackson, Michigan.

On January 26, petitioner was brought before the Court for sentence he was not represented by counsel and was not advised by the Court that he had the right to be so represented. No further information was given him as to the nature of the charge (R. 21), and he was sentenced to imprisonment for a minimum term of four years and ten months under a statute by the terms of which the maximum sentence is five years. He is now serving this sentence in the State Prison for Southern Michigan at Jackson, Michigan.

A petition for leave to file a motion for new trial was filed in the Circuit Court setting forth these facts (R. 8 et seq.). An answer to the petition was filed by the assisting prosecuting attorney (R. 14) containing argumentative matter but not denying the specific allegations of the petition. An affidavit of the sheriff was also filed denying generally the allegations of petitioner and denying that defendant asked permission to employ counsel and that the sheriff made any promises to the wife of the petitioner or advised her not to procure counsel. The sheriff also denied that he had anything to do with the searching of petitioner's home in Wisconsin.

Upon a hearing before the Court (R. 17), without taking evidence, and merely upon its own statement as to petitioner's ability and knowledge, and the statement as to what the Court claimed he had ascertained by private examination of petitioner, denied the motion. Petition for leave to appeal from the denial of the motion was filed in the Supreme Court of Michigan (R. 1) and was denied June 30, 1943 (R. 22). Petition for rehearing was filed and was denied by the Supreme Court October 5, 1943 (R. 23).

QUESTIONS PRESENTED

The case presents the question whether a conviction in a case in which defendant has been prevented by state officers from securing counsel and has been induced by persuasion and promises to waive preliminary hearing and to plead guilty and has been misinformed of the nature of the offense and has not been informed by the Court of his constitutional right to counsel, and has not been adequately informed by the Court of the nature of the charge and where evidence obtained by illegal search has been used by the Court in arriving at a judgment and where the alleged political beliefs of the defendant have influenced the judgment of the Court is valid under the Fourteenth Amendment of the Constitution of the United States.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

The Supreme Court of the State of Michigan, a Court of last resort, has decided a federal question in a way in conflict with applicable decisions of this Court.

Smith vs. O'Grady, 312 U.S. 329, 61 Sup. C. 572, 85 L. Ed. 859.

Walker vs. Johnston, 312 U.S. 275, 279 et seq., 85 L. Ed. 930, 61 Sup. C. 574.

Cochran vs. Kansas et al., 316 U.S. 255, 86 L. Ed. 1453, 62 Sup. C. 1068.

Powell vs. Alabama, 287 U.S. 45, 57, 77 L. Ed. 159, 53 Sup. C. 55.

Lisenba vs. California, 314 U.S. 219, 236, 86 L. Ed. 166, 179, 62 Sup. C. 280.

Anderson vs. U. S., 318 U.S. 350, 87 L. Ed. 589, 63 Sup. C. 599, 602.

McNabb vs. U. S., 318 U.S. 332, 87 L. Ed. 579, 585, 63 Sup. C. 608, 614.

Betts vs. Brady, Warden, 316 U.S. 455, 86 L. Ed. 1595, 62 Sup. C. 1252.

Chambers vs. Florida, 309 U.S. 227, 84 L. Ed. 716, 60 Sup. C. 472.

Johnson vs. Zerbst, 304 U.S. 458, 82 L. Ed. 461, 58 Sup. C. 1019.

Avery vs. Alabama, 308 U.S. 444, 84 L. Ed. 377, 60 Sup. C. 321.

Waley vs. Johnston, 316 U.S. 101, 62 Sup. C. 964, 86 L. Ed. 1305.

Wherefore, it is respectfully prayed that a writ of certiorari be issued out of, and under the seal of, this Honorable Court directed to the Supreme Court of the State of Michigan commanding that Court to certify and send to this Court for its review and determination the full and complete transcript of the record and all proceedings in the case at bar, and that the judgment of the said Supreme Court of the State of Michigan may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as this Honorable Court may deem just and proper, and your petitioner will ever pray.

Respectfully submitted,

HERBERT OTTO SCHUCHARDT,
Petitioner.

A. W. RICHTER,
Counsel for Petitioner.

